

*United States Court of Appeals
for the Second Circuit*



**APPELLEE'S
APPENDIX**

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PPS

75-1103

United States Court of Appeals
FOR THE SECOND CIRCUIT
Docket No. 75-1103

UNITED STATES OF AMERICA,
Appellee,

—v.—

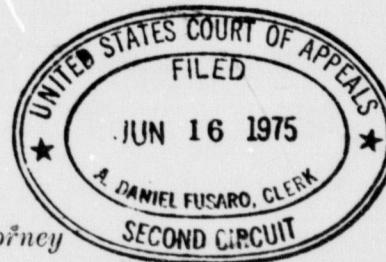
MARGARET SAMUEL,
Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

APPENDIX FOR THE APPELLEE

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(In the absence of the jury.)

THE COURT: All right. With respect to the charge, I have had no written requests. Is there anything particular to be taken up?

MR. CLIFFORD: No, your Honor. Unfortunately, my secretary has been out with the flu yesterday and today, and I haven't had anything to type up.

The only verbal request I have, your Honor, would be an instruction on the nonpresence of the defendant at the scene at the time at which the government alleges that she was present and that that be given without the use of the word "alibi" which I believe is a freight-ladened word, and should not be used in the Court's instruction to the jury.

THE COURT: Well, I don't know how much I'll say about that. I think I'll be guided in part by the way the argument develops. This isn't a classic case.

MR. CLIFFORD: No, it's not, your Honor. I would agree with that.

THE COURT: The alibi being inconsistent with the commission of an offense.

MR. CLIFFORD: Yes, sir.

THE COURT: So if I think your theory of the case warrants a statement in the charge, I'll -- I'll allude to it. But I think I better hear the arguments first.

MR. CLIFFORD: Yes, yes, your Honor, fine.

1 MR. MAXWELL: Your Honor, with respect to the elements,
2 I presume the Court will be charging that the defendant had
3 the -- we have to find the defendant had the checks in her
4 possession, that they were stolen from the mail, and that the
5 defendant knew they were stolen.

6 THE COURT: That's virtually correct. I think the
7 statute says that they were unlawfully possessed.

8 MR. CLIFFORD: Fine.

9 THE COURT: But it is essentially that the checks were
10 stolen, that she unlawfully possessed them, and that she knew
11 the checks had been stolen, but not that she knew they had been
12 stolen from the mails.

13 MR. MAXWELL: And the Court will be, I presume, charg-
14 ing on the inferences of possession of recently stolen property
15 and the inferences of a properly addressed letter?

16 THE COURT: Yes. All right. Which is the count that
17 refers to the check on which there's a fingerprint?

18 MR. MAXWELL: Count Nine, your Honor.

19 MR. CLIFFORD: Count Nine.

20 THE COURT: That's Nine.

21 MR. MAXWELL: Count Nine on Government Exhibit 9.

22 MR. CLIFFORD: AS I recall, the exhibits matched the
23 counts.

24 MR. MAXWELL: Yes, they do.

25 THE COURT: All right.

1 THE COURT: All right. Ladies and gentlemen, you have
2 heard the evidence in the case, and the summations of counsel.

3 Now it is my responsibility to instruct you as to the
4 rules of law that are to govern your consideration of the
5 evidence in your deliberations. It is exclusively the function
6 of the Court to set forth the rules of law which govern the
7 case and instruct you as to their application. On these legal
8 matters, you are to take the law as I give it to you; you are
9 not at liberty to do otherwise.

10 On the other hand, when it comes to deciding what
11 the facts of the case are, that's entirely your responsibility,
12 you are the sole judges of the facts. You are to recollect
13 and weigh the testimony, draw your own conclusions, but you
14 may not go outside the evidence to find any fact, nor resort to
15 guesswork, conjecture or suspicion.

16 Now, in this case, the government is to be considered
17 in no different light than any party to a lawsuit. Counsel
18 for the government must be considered in no different light
19 than counsel for the defendant. The fact that the government
20 is a party entitles it to no greater consideration or lesser
21 consideration than that accorded any other party in a lawsuit.

22 As I have told you, the summations of counsel are
23 not evidence, and if anything they said or anything I should say
24 in connection with evidence differs from your recollection of
25 it, you are in no way bound by what they said about the evidence

1 or what I said about the evidence. You are the ones who have to
2 decide, based on your recollection of the testimony, what was
3 testified to and what reasonable conclusions are to be drawn
4 from that testimony.

5 Now, there are, in general, two types of evidence
6 you can consider. One is direct evidence: that is, testimony of
7 an eyewitness. And the other is circumstantial evidence: that
8 is, the proof of a chain of circumstances from which some other
9 fact may be inferred.

10 Now, circumstantial evidence may be received and is
11 entitled to such consideration as you find it deserves, depending
12 on the inferences you think it necessary and reasonable to draw.
13 No greater degree of certainty is required when evidence is
14 circumstantial than when it is direct, for in either case, you
15 must be convinced beyond a reasonable doubt of the guilt of the
16 defendant.

17 Circumstantial evidence consists of facts proved to
18 your satisfaction from which the jury may infer by a process
19 of reasoning other facts that are sought to be established as
20 true. So you have to apply your reasoning, your common sense,
21 your judgment in deciding whether or not you choose to draw
22 certain inferences from the facts in this case, and later I'll
23 discuss some specific inferences that you are entitled to draw
24 in a case of this sort. But whether you draw inferences is up
25 to you.

If, when you consider all of the evidence in the case, you can say that the inferences to be drawn exclude every hypothesis consistent with innocence, then you are entitled to find the defendant guilty. But if every hypothesis consistent with innocence is not excluded, then, of course, you are not entitled to find the defendant guilty.

Now, in this criminal case, as in every criminal case, a defendant is presumed to be innocent unless prove guilty beyond a reasonable doubt. That presumption of innocence was with the defendant when she was first presented for trial, and it continues with her throughout the trial. As far as you are concerned, she is innocent unless and until such time as the evidence produced in the case, considered by you satisfies you beyond a reasonable doubt that the defendant is guilty, and the burden is on the government to prove the crimes charged in the indictment. A defendant does not have to prove that she is innocent.

So before you may find the defendant guilty on any count, the government must prove to you beyond a reasonable doubt every element necessary to constitute the crime charged.

Whether that burden of proof that the government has has been sustained depends not on the number of witnesses, nor on the amount of their testimony, but on the nature and the quality of their testimony.

Now, a reasonable doubt means a doubt founded upon

1 reason. As the words imply, it is a doubt as will be enter-
2 tained by a reasonable person after all the evidence in the case
3 is analyzed and heard and weighed. A reasonable doubt may arise
4 not only from the evidence produced, but also from a lack of
5 evidence. Since the burden is on the government to prove the
6 defendant guilty beyond a reasonable doubt of every element of
7 the crime charged, a defendant has the right to rely on the fail-
8 ure of the prosecution to establish such proof. However,
9 absolute or mathematical certainty is not required, but there
10 must be such certainty as satisfies your reason and judgment
11 and such that you feel conscientiously bound to act upon.

12 Reasonable doubt is not a fanciful doubt or whimsical or capricious
13 doubt, for anything relating to human affairs and depending upon
14 human testimony is open to some possible or imaginary doubt.
15 A reasonable doubt is such doubt as would cause a prudent person
16 to hesitate before acting in matters of importance to himself
17 or herself.

18 So if the evidence warrants, in your judgment, the
19 conclusion that the defendant is guilty so as to exclude every
20 other reasonable conclusion, you should declare her to be guilty.
21 On the other hand, if on all the evidence you do have a reasonable
22 doubt as to the guilt of the defendant, then you must find her
23 not guilty.

24 Now, this case involves charges brought against the
25 defendant, Margaret Samuel, and those charges are contained in

1 an indictment, which you will have in the jury room. It bears
2 the number B-74-39, and I will deal with the indictment in a
3 moment.

4 Let me first say that the indictment is simply the
5 formal method by which the grand jury accuses a defendant of
6 certain crimes. The indictment defines the crimes charged and
7 the manner of their accomplishment. The indictment is not
8 evidence and it is without bearing or significance in your
9 consideration of this case, is to be given no weight in
10 determining guilt or innocence. By her pleas of not guilty,
11 the defendant has denied every element of the offenses alleged
12 in the indictment.

13 Now, the indictment is in nine counts, and I instruct
14 you that you are to consider each count separately and return
15 individual verdicts of guilty or not guilty with respect to each
16 of the nine counts, and your verdict on any one count is not to
17 influence your verdict on any other count. These are nine
18 separate allegations, nine separate offenses that are charged in
19 this case.

20 Now, federal law makes it a crime to unlawfully
21 possess any letter or any article of -- contained in a letter
22 which has been stolen from the U. S. Mail, knowing the same
23 to have been stolen; and the indictment in this case charges
24 the defendant with nine violations of that statute of the
25 Criminal Code. Each alleged violation concerns possession of

1 a different check.

2 Let me read Count One so you will see the style
3 of it. Count One says: "On or about the 30th day of October,
4 1972, in the District of Connecticut, Margaret Samuel had in her
5 possession a Connecticut State Welfare check, number EC-500525,
6 dated November 1, 1972, payable to the order of Daisey Langston,
7 in the amount of \$74.81, which had been stolen from the mail,
8 well knowing the said check had been stolen, in violation of the
9 pertinent statute." And all of the other remaining eight counts
10 of the indictment are in similar form, and they refer to
11 different checks alleged to be possessed on different dates.

12 Now, there are three elements of the offense charged
13 in each of these nine counts, and the elements are the same
14 with respect to each of the nine counts. And, as I said, the
15 government must prove each of these three elements beyond a
16 reasonable doubt before there can be a conviction on any count.

17 First, that the check had been stolen from the U. S.
18 Mails;

19 Second, that the defendant unlawfully possessed it, and;
20 Third, that the defendant knew the check had been
21 stolen.

22 Now, let me explain a little more about each element
23 and instruct you as to certain considerations that you are
24 entitled to take into account in deciding whether each element
25 has been proved beyond a reasonable doubt.

1 As to the first element, that the check was stolen
2 from the mails, it is not necessary that there be direct
3 evidence, such as eyewitness testimony, showing that there
4 was a theft from the mails. For example, there's been no testi-
5 mony in this case that a postbox was ripped open, or that a mail
6 bag was cut, or anything of that sort. But whether or not a
7 check has been stolen from the mails can be inferred from facts
8 that you find to be established.

9 The government has offered evidence to show that the
10 checks in question were prepared for mailing and were placed
11 in the mails, and that the addressee never received the checks.
12 If you find that the checks were properly addressed and placed
13 in the mails, and were not received by the addressee, you are
14 entitled to conclude from those facts that the checks were
15 stolen from the mails by someone. You need not draw that
16 inference, but it is an inference you are entitled to draw if
17 you think it is reasonable to do so, based on all the facts and
18 circumstances in the case.

19 Of course, to establish the first element it is not
20 necessary for the government to prove that the defendant is the
21 person who stole the checks from the mail. The first element is
22 simply that the checks were stolen from the mails by someone.

23 Now, the second element. The second element is that
24 the defendant unlawfully possessed the checks. The evidence is
25 in dispute to whether the defendant possessed the checks. She

1 denies that she did. The government has offered evidence of a
2 handwriting analyst to show that the defendant wrote a forged
3 endorsement on each check, and the evidence of a fingerprint
4 analyst to show that the defendant's fingerprint appears on the
5 check mentioned in Count Nine.

6 So this is a question of fact for you to resolve from
7 all the evidence as to whether or not the government has proved
8 that the defendant possessed the check, and, of course, it is
9 the defendant's further contention that on February 20th, she
10 was not at the place where -- at the store where apparently the
11 check was negotiated. Now, whether she was there, whether that
12 was the date the check was actually negotiated, those are ques-
13 tions of facts that you will have to consider.

14 Now, possession in this case means physical custody.
15 If you find that the defendant wrote a forged endorsement on
16 the back of the check, then you would be entitled to conclude
17 that she had sufficient possession of the check to establish
18 the possession required to satisfy the second element of the
19 offense charged. And the possession must be found to be
20 unlawful possession. Unlawful simply means contrary to law. To
21 act unlawfully, one must willfully do something prohibited by
22 law, and an act is done willfully if done voluntarily and
23 intentionally and with the specific intent to do what the law
24 prohibits: that is, with a bad purpose to disobey or disregard
25 the law.

1 Now, the third element is that the defendant knew the
2 check was stolen. It is not necessary for the government to
3 prove that she knew this check was stolen from the mail, but
4 the government must prove that she knew the check was a stolen
5 check. If she knew it was a stolen check, then her possession of
6 it was unlawful, if you are satisfied she had no lawful right
7 to that check.

8 Now, deciding what knowledge a person has is not always
9 an easy thing to do. Obviously, you can't look into someone's
10 mind and determine what they know. Knowledge is a fact that can
11 be inferred from other circumstances, such as what a person does.
12 In considering whether a person has knowledge that an item was
13 stolen, you are entitled, but not required, to draw an inference
14 of such knowledge from the fact, if you find it is a fact, that
15 the person had possession of an item that had recently been
16 stolen. Possession of recently stolen property, if not
17 satisfactorily explained, is ordinarily a circumstance from
18 which you may reasonably draw the inference and find in the
19 light of the surrounding circumstances shown by the evidence that
20 the person in possession knew the property had been stolen.

21 However, you are never required to make this inference,
22 it is the exclusive province of the jury to determine whether
23 the facts and circumstances shown by the evidence in this case
24 warrant any inference which the law permits the jury to draw
25 from the possession of recently stolen property.

1 The term "recently" is a relative term, and has no
2 fixed meaning. Whether property may be considered as recently
3 stolen depends on the nature of the property and all the facts
4 and circumstances shown by the evidence in the case. The longer
5 the period of time since the theft, the more doubtful becomes
6 the inference that may reasonably be drawn from unexplained
7 possession.

8 If you should find beyond a reasonable doubt from the
9 evidence in this case that the mail described in these counts
10 was stolen and that while recently stolen, the contents of
11 said mails: that is, the checks, were in the possession of
12 the defendant, you would ordinarily be justified in drawing
13 from those facts the inference that the contents were possessed
14 by the accused with knowledge that it was stolen property,
15 unless such possession is explained by facts and circumstances
16 in this case which are consistent with the defendant's innocence.

17 Now, of course, in this case, the defendant has not
18 attempted to explain her possession, because she has denied that
19 she ever possessed the checks. So you are entitled to draw the
20 inference that she knew the checks were stolen if you are
21 satisfied beyond a reasonable doubt that she had checks that
22 were recently stolen in her possession. Whether you choose to
23 draw that inference is entirely up to you, and, of course, as
24 with every element of the offense, the government must prove
25 this third element beyond a reasonable doubt.

Now, in considering the evidence in this case, you have to decide upon the credibility of the witnesses you heard: that is, are they believable? And there's certain considerations you might want to keep in mind. One is the appearance of the witness on the stand. Try to size the witness up. Did he or she appear to be telling the truth, appear to be honest, appear to be intelligent? Did the witnesses appear to be people who could have observed accurately what they're telling you about, would be likely to have remembered accurately and capable of reporting to you accurately?

Consider whether the testimony that you heard is plausible. Does it ring true? Are there inconsistencies in it? How does it fit in with the other evidence in the case which you do believe and find to be established? And you may also bear in mind that if you find that a witness has been deliberately falsifying on any material point in that testimony, you are privileged to take that fact into consideration in determining whether the person has falsely testified on other points. But simply because you find a witness has not repeated one fact accurately, it doesn't necessarily follow the witness is wrong on every other point. The witness may be honestly mistaken on one point, and entirely accurate on other points.

A witness may even deliberately falsify on one point and be entirely truthful on other points. But if you find a

1 witness has deliberately lied on one material point, it is
2 only natural you would be suspicious of that testimony on all
3 subjects, and under those circumstances, you are entitled to
4 disbelieve the whole testimony of that witness. Whether you
5 believe testimony or not lies in your own sound judgment.
6 You have the right to reject testimony, even though it is
7 uncontradicted if you feel you have a justifiable reason for
8 doing so.

9 Another consideration is whether the witness whose
10 testimony you are considering has any bias or interest in the
11 outcome of the case. And if so, whether that bias or interest
12 has been permitted to color the testimony being given. Of
13 course, it doesn't follow simply from the fact that a witness has
14 a bias or an interest that testimony is to be disbelieved. Many
15 people, no matter what their interest in the outcome of a
16 case, would not testify falsely. On the other hand, a jury
17 should always bear in mind that a witness has a bias or an
18 interest in the outcome of the case, that bias or interest may
19 offer something of a temptation to shade testimony, whether to
20 gain advantage for himself or herself, or to do damage to someone
21 else.

22 In short, in considering the credibility of witnesses,
23 apply the same considerations and use the same sound judgment
24 and common sense that you apply to questions of truth and
25 veracity that occur in ordinary decisions of your lives every day.

1 Now, a defendant who wishes to testify is a competent
2 witness, as Miss Samuel did in this case, and the defendant's
3 testimony is to be judged in the same way as any other witness.

4 Now, in this case, the government offered testimony of
5 a fingerprint analyst and a document analyst, a handwriting
6 analyst. The rules of evidence ordinarily permit a witness
7 to testify as to his opinions or conclusions, but there's an
8 exception to that rule in the case of what we call an expert
9 witness; witnesses who by education and experience have become
10 expert in some art or profession or calling may state an opinion
11 as to a relevant and material matter in which they profess to
12 be experts, and give their reasons for their opinion. You
13 should consider the expert opinion which you received in this case
14 and give it such weight as you think it deserves. If you decide
15 the opinion of an expert witness is not based on sufficient
16 education and experience, or if you should conclude that the
17 reasons given are not sound, or that the opinion is outweighed
18 by other evidence, you may disregard the opinion. On the other
19 hand, if you find the experience and the training of an expert to
20 be persuasive, and the expert's reasons for his opinion to be
21 sound, you are entitled to accept the opinion. Whether you
22 accept an opinion of an expert, again, is entirely up to you as
23 jurors.

24 Now, let me remind you that you are duty bound to
25 apply the rules of law that I have given to you to the facts of

1 the case as you find them.

2 When you retire to the jury room, select a foreman
3 or forelady, determine the facts on the basis of the evidence,
4 apply the law, and then return and render each of your verdicts
5 on each of the nine counts, and render those verdicts fairly,
6 uprightly and without a scintilla of prejudice.

7 When you reach a verdict on any one count, it must be
8 a unanimous verdict.

9 It is the duty of each juror to discuss and consider
10 the opinions of other jurors. Despite that, in the last analysis,
11 it is your individual duty to make up your own mind and decide
12 the case on the basis of your own individual judgment and
13 conscience.

14 Now, when you retire to the jury room, wait just a
15 moment until the Clerk brings you the indictment and the
16 exhibits, and at that point, begin your deliberations.

17 When you have reached your verdicts, let the Clerk know
18 through the Bailiff, and then return to the jury room.

19 I will excuse the alternate, Mr. Vadas, who has been
20 patiently with us for the last two days. As it turned out, we
21 didn't need your services, but your attendance has assured us
22 that there would be a full jury of twelve ready to hear the case,
23 and we appreciate your time.

24 All right. The jury may now retire to the jury room.

25 (Jury left courtroom at 11:30 a.m.)

1 THE COURT: Government have exceptions or further
2 requests?

3 MR. MAXWELL: No, your Honor, we don't.

4 THE COURT: Does the defendant?

5 MR. CLIFFORD: Yes, your Honor, not totally
6 unexpected. I'm sure the defendant excepts to the charge that
7 the defendant knew that the check had been stolen, but not necessary
8 to know that she prove it to be stolen from the mail.

9 And the second is the charge of your Honor to the
10 jury that they may draw an inference of knowledge of possession
11 from recently stolen property, and that general line of
12 instruction on the presumption. The defendant would except to
13 that, your Honor.

14 THE COURT: I take it you don't quarrel with my
15 statement of the drawing of the inference, but whether it is
16 a permissible inference at all?

17 MR. CLIFFORD: That's correct, your Honor. Yes, your
18 Honor. You stated the law correctly, I think that that's not a
19 proper instruction to the jury.

20 THE COURT: Well, all right. I feel bound by higher
21 authority, and so I'll reject those requests to correct, and
22 not instruct them.

23 MR. CLIFFORD: Thank you.

24 THE COURT: We'll stand in recess.

25 MR. MAXWELL: Your Honor, I have gone through the

